

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

JONES, et al.

Plaintiffs,
v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

DEFENDANTS' MOTION TO DISMISS AND TO STRIKE CLAIMS PREVIOUSLY DISMISSED AND MATERIAL PREVIOUSLY STRUCK

On September 20, 2023, the Court permitted Plaintiffs to amend their complaint to add certain investment funds advised by Defendants Bain Capital Private Equity, LP or Charlesbank Capital Partners, LLC that at various times invested in Varsity Brands. (ECF No. 487.) The Court provided, however, that Plaintiffs were not to “attempt[] to resurrect claims that have already been dismissed” and stated that the motion to amend was denied to that extent. (*Id.* at PageID 31530.)

In ruling on Defendants’ original motion to dismiss, the Court had likewise dismissed “Plaintiffs’ claims under the antitrust laws of Alaska, Colorado, Illinois, and Alabama, as well as the Tennessee claims related to the Cheer Camp and Cheer Competition markets” (ECF 333 at PageID 7251) and Plaintiffs’ claims under the consumer protection laws of, *inter alia*, Colorado and Illinois on that basis (*Id.* at PageID 7252). On August 31, 2023, the Court reaffirmed its prior ruling dismissing Plaintiffs’ claims under the Tennessee Trade Practices Act as to cheer

camps and competitions. (ECF No. 475 at 19504-06.) The Court also granted Defendants' motion to strike the allegations of a "Nationwide Damages Class." (*Id.* at PageID 19517-23.)

Notwithstanding the Court's direction not to "attempt[] to resurrect claims that have already been dismissed," Plaintiffs included all of these dismissed claims in their Amended Complaint. (*See* ECF No. 400 (Amended Complaint) ¶¶ 279A (Alabama antitrust statute); 279B (Alaska antitrust statute); 279F (Colorado antitrust statute); 279J (Illinois antitrust statute); 279B (Tennessee antitrust statute, including claims as to camps and apparel); 286D (Colorado consumer protection statute); 286J (Illinois consumer protection statute).) Plaintiffs also improperly included the previously-struck allegations of a "Nationwide Damages Class." (*Id.* ¶¶ 45, 270-76, 288-97 (alleging existence of, and claims on behalf of, a "Nationwide Damages Class.").)

Defendants accordingly request that the Court strike those claims and allegations from the Amended Complaint under Rule 12(f) and/or dismiss those claims under Rules 12(b)(6) or 12(c) of the Federal Rules of Civil Procedure.

Defendants note that Plaintiffs have asserted additional claims under various states' laws, which should be dismissed as well, for the reasons stated in Defendants' summary judgment motion and associated briefing. (*See* ECF No. 471 at 47-60; ECF No. 505 at 21-27.)

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Respectfully submitted,

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